

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

OCT 16 1998

Geraldine Treutelaar Crockett,  
Clerk  
/s/

IN RE:

JEFFREY S. LAVOIE and  
MARY R. LAVOIE,

Debtors.

Bankruptcy No. 98-50635  
(Chapter 7)

JUDGEMENT ENTERED ON OCT 16 1998

ORDER SUSTAINING OBJECTION TO EXEMPTION

THIS MATTER came before the Court on October 6, 1998 on the Trustee's Objection to Exemption and Valuation. The Trustee objected to the Debtors' claimed exemption for their 1997 Seadoo personal watercraft under the "motor vehicle" exemption in N.C. GEN. STAT. section 1C-1601(a)(3). Based on the findings discussed below, the Court finds for the Trustee and disallows Debtors' exemption.

**Findings of Fact**

Debtors filed a voluntary Chapter 7 petition on May 13, 1998. Schedule B of the petition listed a 1997 Seadoo personal watercraft (Seadoo), valued at \$4,000. Schedule C of the petition claimed a \$1,500 exemption for the Seadoo under N.C. GEN. STAT. section 1C-1601(a)(3), the motor vehicle exemption. Debtors amended Schedule C on July 8, 1998, changing the value of the Seadoo from \$4,000 to \$2,995.

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The Trustee filed an objection to the exemption and valuation of the Seadoo. The Debtors responded, requesting a hearing on the Trustee's objection. The hearing was held on October 6, 1998 in Statesville. The main issue at the hearing was whether a Seadoo can be considered a motor vehicle for the purpose of the exemption statute. Due to the novelty of the issue, and the possible repercussions on such things as all-terrain vehicles and riding lawn-mowers, the Court took the issue under advisement. Upon review of the applicable law, the Court holds that a Seadoo is not a motor vehicle, and the Debtors may not claim an exemption in it under N.C. GEN. STAT. section 1C-1603(a) (3).

#### **Conclusions of Law**

Exemption laws are intended to work a balance between the protection of the debtor from destitution and destruction at the creditor's hands and the protection of a sense of honesty and fair play that prohibits debtors from taking undue advantage of the state's largesse in creating exemptions in the first place.<sup>1</sup> Exemption laws also work to prevent the "hardship and drain on the public purse cause by debtors' resort to welfare by allowing debtors to retain property necessary to maintain household,

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<sup>1</sup> In re Schwarzbach, 1989 WL 36047 (W.D. Tex. 1989) (citing Kroger & Reynolds, *Is Pre-filing Engineering Prudent Planning or Section 727 Fraud? (Or When Does a Pig Become a Hog?)*, 93 COM.L.J. 465, 466-67 (Summer 1988)).

livelihood, and retirement security.”<sup>2</sup>

Section 522(d) of the Bankruptcy Code lists the Federal exemptions applicable in a bankruptcy case. Section 522(b) allows the states to “opt-out” of the Federal Exemptions. N.C. GEN. STAT. Section 1C-1603(f) adopts the opt-out provision, making state law exemptions applicable in a bankruptcy case. The general rule is that North Carolina’s exemption laws are to be liberally construed in favor of the exemption.<sup>3</sup> North Carolina provides each debtor an exemption of \$1,500 for one motor vehicle.<sup>4</sup>

The term “motor vehicle” is not defined anywhere in Chapter 1C of the North Carolina General Statutes, and there is no case law directly on point. It is necessary to look elsewhere within the General Statutes to interpret the meaning of the term.<sup>5</sup>

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<sup>2</sup> In re Johnson, 80 B.R. 953, 962-63 (Bankr. D.Minn. 1987).

<sup>3</sup> In re Laues, 90 B.R. 158 (Bankr. E.D. N.C. 1988).

<sup>4</sup> N.C. GEN. STAT. § 1C-1601(a)(3) (1996). The section provides: “[Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of his creditors:] The debtor’s interest, not to exceed one thousand five hundred dollars (\$1,500) in value, in one motor vehicle.”

<sup>5</sup> *But see In re Trevino*, 96 B.R. 608 (Bankr. E.D. N.C. 1989) (holding that a horse trailer is not a motor vehicle). The Trevino Court held that little weight should be given to the Chapter 20 definition of motor vehicles in determining a debtors’ exemption rights. The Court then summarily held that it did not “believe that a horse trailer without a motor qualifies as a motor vehicle.” *Id.* at 611. This Court however, finds the definitions found throughout the General Statutes helpful to determine what types of devices are to be included under the motor vehicle exemption, especially in light of the liberal construction to be given to those statutes.

The initial step is to determine the nature of a Seadoo. A Seadoo is a personal watercraft, a term that is defined in the General Statutes.<sup>6</sup> The definition of personal watercraft classifies the device as a vessel. Vessel is a term that is also defined by the General Statutes.<sup>7</sup> Vessels are limited to devices that travel on the water.

A vehicle, on the other hand, is defined as a device that travels on a highway.<sup>8</sup> The General Statutes also define the term highway, stating that the terms "'highway' and 'street' and their cognates are synonymous."<sup>9</sup> Clearly a vessel is not a vehicle.

The North Carolina motor vehicle exemption is limited to motor vehicles. The General Statutes clearly separate vehicles and

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<sup>6</sup> N.C. GEN. STAT. § 75A-13.2(a) (1994). The section defines personal watercraft as: [A] small class A-1 or A-2 vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel..."

<sup>7</sup> N.C. GEN. STAT. § 75A-2(5) (1994). The section defines a vessel as: "Vessel means every description of watercraft or structure, other than a seaplane on the water, used or capable of being used as a means of transportation or habitation on the water."

<sup>8</sup> N.C. GEN. STAT. § 20-4.01(49) (1993). The section defines a vehicle as: "Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks."

<sup>9</sup> N.C. GEN. STAT. § 20-4.01(13) (1993).

vessels, devoting separate chapters to each.<sup>10</sup> Even though exemptions are to be liberally construed, there is no indication anywhere in the General Statutes that vehicles and vessels are the same for exemption purposes. The separate treatment throughout the General Statutes indicates just the opposite.

To allow the Debtors' claimed exemption would essentially allow the Debtors to take undue advantage of the State's exemption laws. The purpose of the motor vehicle exemption is to provide the debtor with a means of transportation that is often necessary to help the debtor make a fresh start. To allow an exemption for a Seadoo would imply that debtors in bankruptcy need expensive recreational vessels to get back on their feet. A Seadoo is not the type of property necessary to maintain household, livelihood, or retirement security.

**WHEREFORE, IT IS ORDERED** that the Trustee's Objection to Exemption is **SUSTAINED**.

This the 16<sup>th</sup> day of October, 1998.

  
J. CRAIG WHITLEY  
UNITED STATES BANKRUPTCY JUDGE

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<sup>10</sup> The General Statutes even provide for separate classifications of vehicles and vessels. See N.C. GEN. STAT. § 75A-6 and §§ 20-4.01(2a), 20-4.01(2b) and 20-4.01(2c).